

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
Criminal Appellate Side

Crim.Rev.Application No.71 of 1999

Shri Vishwanath Shankar Kurade
Age about 55 years, Occupation
Service residing at Umbraj, Tal.
Karad, Dist. Satara

..Petitioner
(Org.Accused)

vs.

1. Special Judicial Magistrate
Satara

2. The State of Maharashtra ..Respondents
(Org.Complainants)

Shri Dilip Bodake for petitioner.
Smt.U.V.Kejariwal, A.P.P. for respondents.

CORAM: S.C.DHARMADHIKARI J.
23rd March, 2007

ORAL JUDGMENT:

1. By this criminal revision application which invokes the powers of this Court under sec.401 of the Code of Criminal Procedure, the petitioner challenges the order dated 27th January, 1999 passed by the learned Special Judicial Magistrate, Satara in S.C.C.No.2422 of 1999. By this order the learned Special Judicial Magistrate, Satara has held that the petitioner/accused pleaded guilty before him and, therefore, he is convicted for the

offence punishable under section 110/117 of the Bombay Police Act, 1951.

2. The petitioner states that he is residing at village Umbraj, Taluka Karad, District Satara. He is employed in Maharashtra State Road Transport Corporation as a clerk and at the relevant time was posted at Satara Division of Maharashtra State Road Transport Corporation. The petitioner used to leave his village by State Transport Bus in the morning for attending his duties and after office hours return back to the village by the State Road Transport Bus. For that purpose, after office hours, he was required to go to the S.T. stand for boarding the bus which would take him to his village. On 25th January, 1999, the petitioner went to S.T. stand at about 9.30 p.m. for boarding the bus back to his village. When the petitioner was at the bus stand suddenly the lights went off and there was commotion amongst the persons present at the bus stand. The petitioner states that the police saw him in this commotion and took him to the police station. He was produced on 27th January, 1999 before the Special Judicial Magistrate, Satara.

3. It is the case of the petitioner that at the police station, staff/police totally misled him and misrepresented the entire case. He was told that a nominal fine of Rs.10/- would be imposed for the alleged act of the petitioner and that being an employee it would be difficult for him to attend the dates and trial. They asked petitioner to plead guilty before the learned Special Judicial Magistrate, Satara.

4. The petitioner alleges that his signature was obtained on a statement in writing to the effect that he is guilty of the offence alleged and further the statement was produced before the Special Judicial Magistrate. Since the petitioner was totally misled and the aforesaid statement was recorded and forwarded to the Magistrate, the learned Magistrate proceeded to pronounce him guilty of the offence and imposed sentence as above and in default of payment of the sum of Rs.100/- to undergo 10 days simple imprisonment.

5. The petitioner has specifically contended that he is totally innocent. The police have misled and misrepresented the facts before the Court below and that is how his statement was obtained together

with his signature thereon. The petitioner has contended that the Special Judicial Magistrate failed to verify at the time when the statement was produced before him that the petitioner indeed had any opportunity to peruse the documents and the allegations contained in the complaint. He failed to apply his mind to the fact as to whether allegations disclose commission of any offence. The Magistrate did not question the petitioner about the allegations against him and as to whether the petitioner has understood the nature of the offence alleged. There is no query put to him with regard to the signature on the statement and whether the contents of the same are made voluntarily so also whether the signature is of his free will and consent. In such circumstances, the conviction is totally vitiated and the order under challenge be set aside.

6. Shri Bodake has invited my attention to the remand report, a copy of which is annexed at page 14. He submits that the said report clearly indicates that the petitioner was arrested on 25th January, 1999 at about 21.30 hours from S.T.bus stand, Satara (Plot no.14). According to Shri Bodake, the scene of offence is described in the

remand report. The details of offence are that the petitioner, along with other passengers in the crowd, was shouting very loudly and his behaviour was indisciplined. He committed breach of peace and, therefore, he has been charged with offence punishable under sections 110 and 117 of the Bombay Police Act. The remand report states that the police have produced the petitioner/accused before the Magistrate and in fact sought his custody. According to Shri Bodake, this remand report is dated 27th January, 1999. All that is stated at the rear portion of the remand report is that the petitioner pleads guilty to the offence alleged. His signature appears below this sentence. Shri Bodake submits that this single sentence which has been written in the remand report is construed as a statement acknowledging and admitting the guilt and that is how the petitioner has been convicted. Shri Bodake has invited my attention to the relevant provisions of the Bombay Police Act, 1951 and Code of Criminal Procedure, 1973. In his submission, howsoever the petty offence may be and howsoever summary the procedure for trial thereof, the minimum that is expected from the learned Special Judicial Magistrate is application of mind to the nature of the allegation, the statement

allegedly made acknowledging and admitting the guilt, the circumstances in which the same has been recorded and lastly and importantly whether the same is of free will and consent of the petitioner/accused. He submits that this procedure is required to be followed otherwise the principles of natural justice are also violated.

7. Learned A.P.P. on the other hand supported the impugned order and submitted that the petitioner had invoked the remedy of filing an appeal which was held to be not maintainable. Similarly, the petitioner has made no grievance before the Special Judicial Magistrate but has turned round and is now making false allegations against the entire machinery as an after thought. In such circumstances, revisional jurisdiction cannot be invoked by him.

8. I have perused sections 110 and 117 of the Bombay Police Act. Section 110 states that no person shall willfully and indecently expose his person in any street or public place or within sight of and in such manner as to be seen from, any street or public place, whether from within any house or building or not, or use indecent language

or behave indecently or riotously, or in a disorderly manner in a street or place of public resort or in any office, station or station house. Admittedly, the petitioner is not charged with earlier part of section 110. He has been charged for shouting at the bus station and behaving in an indecent manner. Perusal of the remand report would indicate that the basic ingredients of this provision which contemplate using indecent language or behaving indecently or riotously or in a disorderly manner in a street or place of public resort or in any office, station or station house have not been mentioned. I am unable to make out from the remand report as to which act of the petitioner would fall in this provision. Thus, the person, namely, the petitioner/accused, has been charged with breach of sec.110 and punished with fine. The Code of Criminal Procedure provides for procedure to be adopted while trying a criminal case by a Court of Sessions or by the Court of Magistrate. Similarly, the trial by summary procedure can be conducted in petty cases as well. However, the legislature has taken care to provide an elaborate mechanism even while trying the cases summarily. Code of Criminal Procedure provides for inbuilt safeguards and checks and is intended to

control arbitrary exercise of powers, including discretionary powers, while trying criminal cases. None could dispute the fact that presumption of innocence is human right. The mandate of Article 21 of the Constitution of India which protects a person's life and liberty would take within its import something more than animal existence. Life cannot be meaningful and purposeful unless a person is permitted to live with dignity, status and reputation and safe guard it zealously. It is in such circumstances that the authorities incharge of implementing the penal laws are obliged to follow the principles of natural justice and conduct the proceedings before them in a fair and just manner. An opportunity contemplated by law to an accused is not an empty formality. In the instant case I am of the opinion that the learned Special Magistrate has not applied his mind at all to the nature of accusation made against the petitioner and whether the petitioner has made any statement admitting his guilt, as contemplated by law. In fact, section 151A of the Bombay Police Act provides for summary disposal of certain cases. Sub-sec.(1) states that the Court taking cognisance of an offence punishable under section 117 or other provisions enumerated therein may state upon the summons to be

served on the accused person that he may, by a specified date, prior to the hearing of the charge plead guilty to the charge by registered letter and remit to the Court such sum, not exceeding Rs.2000/- as the Court may specify. Sub-sec.(2) states that where an accused person pleads guilty and remits the sum specified, no further proceedings in respect of the offence shall be taken against him.

9. Thus, even while enacting the Bombay Police Act, the legislature has taken care and provided elaborate mechanism wherein the Court taking cognisance of the offences punishable under certain provisions can summarily dispose off the cases on the basis of the plea of guilt which is forwarded to it in writing. In my view, in the facts and circumstances of the present case, the learned Special Magistrate was not justified in relying upon the sentence "I plead guilty to the offence" which appears on the rear of the remand report with the signature of the petitioner thereon. The learned Special Judicial Magistrate in the peculiar facts of this case was obliged to satisfy himself about the nature of the accusations against the petitioner, the circumstances in which they were

made and the action of the police authorities subsequent to the petitioner being apprehended and arrested. Further, he was obliged to apply his mind to the basic requirement in law, namely, whether the petitioner has pleaded guilty to the charge voluntarily and has signed any statement of his free will. It is pertinent to note in this case that the petitioner was taken in custody and when he was under arrest and being produced before the Special Magistrate the alleged statement has been recorded. Thus, in the peculiar facts and circumstances of this case, the Special Judicial Magistrate was obliged to apply his mind to the above aspects and thereafter record a conviction and impose the fine. This being admittedly not done the impugned order is vitiated by serious error apparent on the face of record so also suffers from a material irregularity resulting in manifest injustice calling for interference by this Court in its Revisional jurisdiction. In the result, the criminal revision application succeeds. Rule is made absolute in terms of prayer clause (b).

(S.C.DHARMADHIKARI J.)